

DEPARTMENT OF PUBLIC HEALTH  
AND HUMAN SERVICES

CHAPTER 110

FOOD AND DRUG STANDARDS

Subchapter 4

Vending of Food and Beverages

**37.110.401 DEFINITIONS** (1) "Adulterated" A food is adulterated if it bears or contains any poisonous or deleterious substance which may be injurious to health, if it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by regulation or in excess of such tolerance if one has been established, if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human consumption, if it has been prepared, packed or stored under insanitary conditions whereby it may have become contaminated with filth or rendered injurious to health, or if the container is composed in whole or in part of a poisonous or deleterious substance which may render the contents injurious to health.

(2) "Commissary" means commissary, catering establishment, restaurant, or any other place in which food, beverage, ingredients, containers, or supplies are kept, handled, prepared or stored and directly from which vending machines are services.

(3) "Employee" means any operator or any person employed by him who handles any food, beverage, or ingredient to be dispensed through vending machines or who comes into contact with food contact surfaces of containers, equipment, utensils, or packaging materials used in connection with vending machine operations or who otherwise services or maintains one or more such machines.

(4) "Food" means any raw, cooked, or processed edible substance, beverage, or ingredient used or intended for use in whole or in part for human consumption.

(5) "Health officer" means the legally designated health authority for the city, town, county or district.

(6) "Hot liquid food or beverage" means any liquid food or beverage, the temperature of which at the time of service to the consumer is at least 150°F.

(7) "Machine location" means the room, enclosed space, or area where one or more vending machines are installed and operated.

(8) "Misbranding" means the use of any written, printed or graphic matter upon or accompanying products or containers dispensed from vending machines, including signs or placards displayed in relation to such products so dispensed which is false or misleading or which violates department labeling requirements.

(9) "Operator" means any person who by contract, agreement or ownership

takes responsibility for furnishing, installing, servicing, operating or maintaining one or more vending machines.

(10) "Person" means any individual, partnership, corporation, company, firm, institution, trustee, association, or any other public or private entity.

(11) "Product contact surface" means any surface of the vending machine, appurtenances, or containers which comes into direct contact with any food, beverage or ingredient.

(12) "Readily perishable food" means any food or beverage or ingredients consisting in whole or in part of milk, milk products, eggs, meat, fish, poultry, or other food capable of supporting rapid and progressive growth of micro-organisms which can cause food infections or food intoxication. However, products in hermetically sealed containers processed by heat to prevent spoilage and dehydrated, dry or powdered products so low in moisture content as to preclude development of micro-organisms are excluded from the terms of this definition.

(13) "Sanitarian" means the representative of the health officer when authorized.

(14) "Single-service article" means any utensil, container, implement, or wrapper intended for use only once in the preparation, storage, display, service or consumption of food or beverage.

(15) "Vending machine" means any self-service device offered for public use which, upon insertion of a coin, coins or token, or by other means, dispenses unit servings of food or beverage, either in bulk or in package, without the necessity of replenishing the device between each vending operation. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.402 SAMPLING, HEARING, DISPOSAL (1) Samples of food, beverage, or ingredient may be taken and examined by the health officer or sanitarian as often as may be necessary to determine freedom from adulteration or misbranding.

(2) The health officer may, on written notice to the operator, impound and forbid for sale any food or beverage which is adulterated or misbranded or which he has probable cause to believe to be adulterated or misbranded.

(3) After the operator has been given an opportunity for a hearing, the health officer may cause to be removed or destroyed any food or beverage which is adulterated or misbranded; provided that in case of misbranding which can be corrected by proper labeling, such food or beverage may be released to the operator for correct labeling under the supervision of the health officer. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 03 and 04 reserved

37.110.405 FOOD, BEVERAGE AND INGREDIENT REQUIREMENTS:

GENERAL (1) Foods, beverages, and ingredients intended for sale through vending machines shall be obtained from sources complying with federal and department laws and rules. Such products shall be clean and wholesome, free from spoilage, and shall be processed, prepared, handled and stored in such a manner as to protect against contamination and adulteration. All product contact surfaces of containers and equipment shall be protected from contamination.

(2) This rule shall be deemed to have been satisfied when the following requirements are met:

(a) All foods, beverages and ingredients offered for sale through vending machines shall be manufactured, processed and prepared in commissaries or establishments which comply with all applicable local, state and federal laws and rules.

(b) All foods, beverages and ingredients offered for sale through vending machines shall be wholesome and free from spoilage, contamination and adulteration.

(c) All foods, beverages and ingredients shall be stored or packaged in clean protective containers, and shall be handled, transported and vended in a sanitary manner. Wet storage or packaged products is prohibited. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.406 PERISHABLES (1) Readily perishable foods offered for sale through vending machines shall be dispensed to the consumer in the individual original container or wrapper into which it was placed at the commissary or at the manufacturer's or processor's plant, or such products shall be dispensed into single-service containers. In those vending machines dispensing readily perishable foods, beverages or ingredients in bulk, the bulk supplies of such foods, beverages or ingredients shall be transferred only to a bulk vending machine container and appurtenances which are clean and have been subjected to an approved bactericidal process.

(2) Readily perishable foods or ingredients within the vending machine shall be maintained at a temperature not higher than 50°F or a temperature not lower than 150°F. Vending machines dispensing readily perishable foods shall be provided with controls which insure the maintenance of these temperatures at all times, provided that an exception may be made for the actual time required to fill or otherwise service the machine and for a maximum recovery period of 30 minutes following completion of filling or servicing operations. Such controls shall also place the machine in an inoperative condition until serviced by the operator in the event of power failure or other conditions which permit the food storage compartment to attain a temperature above 50°F or below 150°F, whichever is applicable. Vending machines dispensing readily perishable food shall be provided with a thermometer which, to an accuracy of ± 2°F indicates the air temperature of the food storage compartment.

(3) With the exception of product contact surfaces of bulk milk vending machines for which separate provisions for cleaning and bactericidal treatment are

specified in ARM 37.110.407(2), all multi-use containers or parts of vending machines which come into direct contact with readily perishable foods, beverages or ingredients shall be removed from the machine daily and shall be thoroughly cleaned and effectively subjected to an approved bactericidal process at the commissary or other approved facility, provided that the requirement for daily cleaning and bactericidal treatments may be waived for those contact surfaces which are maintained at all times at a temperature of not higher than 50°F or at a temperature of not lower than 150°F, whichever is applicable. Such parts shall, after cleaning and bactericidal treatment, be protected from contamination. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.407 MILK AND MILK PRODUCTS (1) Milk and fluid milk products offered for sale through vending machines shall be dispensed only in individual, original containers or from bulk containers into which such product was placed at the milk plant, provided that in the case of vending machines that use fluid milk products as an ingredient in hot liquid foods or beverages, such milk product may be transferred at the machine location from the individual original container of not more than one-half gallon capacity to a vending machine bulk container which is clean and has been subjected to an approved bactericidal process in accordance with ARM 37.110.406(3); provided further that in such transfer, the entire contents of the individual original container are used.

(2) All multi-use parts of any bulk milk vending machine which comes into direct contact with the milk or milk product shall be effectively cleaned and bactericidally treated at the milk plant, provided that single-service dispensing tubes which receive bactericidal treatment at the fabricating plant and which are individually packaged in such manner as to preclude contamination, may be sealed with 2 seals in such manner as to make it impossible to withdraw any part of its contents without breaking one seal and impractical to introduce any substance without breaking the other seal. The delivery tube and any milk contact parts of the dispensing device shall be attached at the milk plant and shall be protected by a moisture proof covering which shall not be removed until after the container is placed in the refrigerated compartment of the vending machine. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 08 and 09 reserved

37.110.410 NONPERISHABLE FOOD MACHINES (1) All parts of vending machines which come into direct contact with other than readily perishable foods shall be thoroughly cleaned and subjected to bactericidal treatment by methods approved by the health officer. The frequency of such cleaning and bactericidal treatment shall be established by the health officer based upon the type of product being dispensed.

(2) A record of such cleaning and bactericidal treatment operations shall be maintained by the operator in each machine and shall be current for at least the past

30 days. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.411 SINGLE-SERVICE CONTAINERS (1) All single- service containers which receive food or beverage from machines dispensing such products in bulk shall be purchased in sanitary cartons or packages which protect the containers from contamination, shall be stored in a clean dry place until used, and shall be handled in a sanitary manner. Such containers shall be stored in the original carton or package in which they were placed at the point of manufacture until introduced into the container magazine or dispenser of the vending machine. Single-service containers stored within the vending machine shall be protected from manual contact, dust, insects, rodents and other contamination. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.412 MACHINE LOCATION (1) The machine location shall be such as to minimize the potential for contamination of the product, shall be easily cleanable, and shall be kept clean.

(2) This rule shall be deemed to have been satisfied when the following requirements are met:

(a) Each vending machine shall be located in a room, area, or space which can be maintained in a clean condition and which is protected from overhead leakage from drains and piping. Each vending machine shall be so located that the space around and under the machine can be easily cleaned and so that insect and rodent harborage is not created.

(b) The floor area upon which vending machines are located shall be reasonably smooth, of cleanable construction and be capable of withstanding repeated washing and scrubbing. This space and the immediate surroundings of each vending machine shall be maintained in a clean condition. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.413 MACHINE CONSTRUCTION: EXTERIOR (1) The exterior construction of the vending machine shall be such as to facilitate cleaning and to minimize the entrance of insects and rodents, and the exterior of the machine shall be kept clean. Service connections shall be such as to protect against unintentional

or accidental interruption of servicing to the machine.

(2) This section shall be deemed to have been satisfied when the following requirements are met:

(a) The vending machine shall be of sturdy construction and the exterior shall be so designed, fabricated and finished as to facilitate its being kept clean, and to minimize the entrance of insects and rodents.

(b) Door and panel access openings to the product and container storage spaces of the machine shall be tight fitting and if necessary, gasketed so as to preclude the entrance of dust, moisture, insects and rodents.

(c) All necessary ventilation louvers or openings into vending machines shall be effectively screened against insects and rodents. Such screening material shall not be less than 16-mesh or equivalent.

(d) In all new vending machines in which a condenser unit is an integral part of the machine, such unit shall be sealed from the product and container storage spaces.

(e) Unless the vending machine is sealed to the floor so as to prevent seepage underneath or can be manually moved with ease, one or more of the following provisions shall be utilized to facilitate cleaning operations:

(i) The machine shall be mounted on legs 6 or more inches in height; or

(ii) The machine shall be mounted on casters or rollers; or

(iii) The machine shall be mounted on gliders which permit it to be easily moved.

(f) All service connections through an exterior wall of the machine, including water, gas, electrical and refrigeration connections shall be grommeted or sealed to prevent the entrance of insects and rodents. All connections to such utilities shall be such as to discourage their unauthorized or unintentional disconnection. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.414 MACHINE CONSTRUCTION: INTERIOR (1) All interior surfaces and component parts of the vending machine shall be so designed and constructed as to permit easy cleaning, and shall be kept clean. All product contact surfaces of the machine shall be smooth, non-toxic, corrosion resistant, and relatively nonabsorbent material, and shall be capable of withstanding repeated cleaning and bactericidal treatment by normal procedures. Such surfaces shall be protected against contamination.

(2) This rule shall be deemed to have been satisfied when the following requirements are met:

(a) The non-product contact surfaces of the interior vending machines shall be so designed and constructed as to permit easy cleaning, and to facilitate maintenance operations. Inaccessible surfaces or areas shall be minimized.

(b) All product contact surfaces of vending machines shall be smooth, in good repair, and free of breaks, corrosion, open seams, cracks and chipped places.

The design of such surfaces shall be such as to preclude routine contact between food and V-type threaded surfaces. All joints and welds in product contact surfaces shall be smooth, and all internal angles and corners of such surfaces shall be rounded to facilitate cleaning.

(c) All product or ingredient contact surfaces of vending machines, including containers, pipes, valves and fittings shall be constructed of non-toxic corrosion resistant and relatively nonabsorbent materials and shall be kept clean. All containers, valves, fittings, chutes and faucets which are in contact with food shall be easily and readily removable and so fabricated as to be easily disassembled and when disassembled, all surfaces shall be visible for inspection and cleaning. In machines of such design that product contact pipes or tubing are not readily removable, in-place cleaning of such pipes and pipe fittings may be permitted, provided they are so arranged that cleaning and bactericidal solutions can be circulated through the fixed system, such solutions will contact all interior surfaces, the system is self-draining or otherwise completely evacuated, and the cleaning procedures result in thorough cleaning of the equipment.

(d) The openings into all non-pressurized containers used for the storage of vendable foods and ingredients, including water, shall be provided with covers which prevent contamination from reaching the interior of the containers. Such covers shall be designed to provide a flange which overlaps the opening, and shall be sloped to provide drainage from the cover surface. Any port opening through the cover shall be flanged upward at least 3/8 inch and shall be provided with a cover which overlaps the flange. Condensation or drip deflecting aprons shall be provided on all piping, thermometers, equipment, rotary shafts, and other functional parts extending into the container unless a water-tight joint is provided. Such aprons shall be considered as satisfactory covers for those openings which are in continuous use. Gaskets, if used, shall be of a material which is non-toxic, relatively stable, and relatively nonabsorbent and shall have a smooth surface. All gasket retaining grooves shall be readily cleanable.

(e) The delivery tube or chute and orifice of all bulk food and bulk beverage vending machines shall be protected from normal manual contact, dust, insects, rodents, and other contamination. The design shall be such as to divert condensation or other moisture from the normal filling position of the container receiving the food or beverage. The vending stage of such machines shall be provided with a tight fitting self-closing door or cover which is kept closed except when the machine is in the process of delivering food or beverage.

(f) The product storage compartment within vending machines dispensing packaged liquid products shall be so constructed as to be self-draining or shall be provided with a drain outlet which permits complete drainage of the compartment. All such drains shall be easily cleanable.

(g) Opening devices which come into contact with the product or the product contact surface of the containers shall be constructed of smooth, non-toxic corrosion resistant and relatively nonabsorbent materials. Unless the opening device is of a single-service type, it shall be readily removable for cleaning and shall be kept clean. Parts of multi-use opening devices which come into contact with the product or product contact surface of containers shall be reasonably protected from manual contact, dust, insects, rodents and other contamination, and such parts shall be readily removable for cleaning and shall be kept clean. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 15 through 19 reserved

37.110.420 WATER SUPPLY (1) The water supply shall conform with the construction, operation and sanitation standards of the department. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.421 WASTE DISPOSAL (1) All wastes shall be properly disposed of, and pending disposition, shall be kept in suitable containers so as to prevent creating a nuisance.

(2) This rule shall be deemed to have been satisfied when the following requirements are met:

(a) All trash and other waste material shall be removed from the machine location as frequently as may be necessary to prevent nuisance and unsightliness and shall be disposed of in a manner approved by the health officer or sanitarian.

(b) Self-closing, leak-proof, readily cleanable, plainly labeled and designated waste container or containers shall be provided in the vicinity of each machine or machines to receive used cups, cartons, wrappers, straws, closures and other single-service items. Such waste containers shall not be located within the vending machine, provided that an exception may be made for those machines dispensing only packaged products with crown closures, in which case the closure receptacle may be located within the machine. Suitable racks or cases shall be provided for multi-use containers or bottles.

(c) Containers shall be provided within all machines dispensing liquid products in bulk for the collection of drip, spillage, overflow or other liquid wastes.

(d) An automatic shut-off device shall be provided which will place the vending machine out of operation before such container overflows. Containers or surfaces on which such wastes may accumulate shall be readily removable for cleaning, shall be easily cleanable, and shall be corrosion resistant. If liquid wastes from drip, spillage or overflow which originate within the machine are discharged into a sewerage system, the connection to the sewer shall be through an approved air gap. (History: Sec. 50-50-103 MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)



37.110.422 TRANSPORTATION (1) Foods, beverages, and ingredients and product contact surfaces of containers, equipment and supplies shall be protected from contamination while in transit to machine location. Readily perishable foods and beverages while in transit shall be maintained at a temperature not higher than 50°F or not lower than 150°F.

(2) This rule shall be deemed to have been satisfied when the following requirements are met:

(a) Food, beverages or ingredients while in transit to vending machine locations shall be protected from the elements, dirt, dust, insects, rodents, and other contamination. Similar protection shall be provided for single-service containers and for the product contact surfaces of equipment, containers, and devices in transit to machine locations.

(b) Readily perishable foods or beverages, while in transit to vending machine locations shall be maintained at a temperature of not higher than 50°F or not lower than 150°F. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 23 through 26 reserved

37.110.427 EMPLOYEE REQUIREMENTS (1) Employees shall keep their

hands clean and shall wear clean outer garments while engaged in handling food or beverages or product contact surfaces of utensils or equipment.

(2) This rule shall be deemed to have been satisfied when the following requirements are met:

(a) Employees shall wash their hands immediately prior to engaging in any vending machine servicing operation which may bring them into contact with foods, beverages, or ingredients or with product contact surfaces of utensils, containers or equipment. While engaged in such servicing operations, employees shall wear clean outer garments.

(3) No employee with any disease in a communicable form, or who is a carrier of such disease shall work in any commissary or in vending machine operations in any capacity which brings him into contact with the production, handling, storage, or transportation of foods, beverages, ingredients or equipment used in vending machine operations, and no operator shall employ in any such capacity any such person, or any person suspected of having any disease in a communicable form or of being a carrier of such disease. Any employee who has a discharging or infected wound, sore or lesion on hands, arms, or any exposed portion of the body shall be excluded from those operations which will bring him into contact with food, beverages, utensils or equipment used in vending machine operations.

(a) Any operator among whose employees there occurs a communicable disease or who suspects or has become a carrier of such disease shall notify the health officer immediately.

(b) When suspicion arises as the possibility of transmission of infection from any employee, the health officer is authorized to require any or all of the following measures:

(i) The immediate exclusion of the employee from all commissaries and vending machine operations.

(ii) The immediate closing of the commissaries and operations concerned until, in the opinion of the health officer, no further danger of disease exists.

(iii) Adequate medical examinations of the employee and of his associates with such laboratory examinations as may be indicated. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.428 INSPECTIONS (1) The local health officer or sanitarian or sanitarian-in-training employed by or contracted with the local board of health must perform an inspection of each licensed commissary or machine located within the board's jurisdiction at least twice every 12 months, unless that schedule is modified by signed agreement with the department.

(2) The local health officer, local health department sanitarian or sanitarian-in-training, or an authorized representative of the department, after proper identification, must be permitted to examine any commissary or machine location at any reasonable time for the purpose of making inspections to determine compliance

with this subchapter and must be permitted to examine the records relating to the commissary or machine to obtain information pertaining to food and supplies purchased, received, or used, or to persons employed.

(3) Whenever an inspection of a commissary or machine location is made, the findings must be recorded on an inspection form approved by the department.

(4) The inspection form shall specify a reasonable period of time for the correction of the violations found, and correction of the violations must be accomplished within the period specified.

(5) The inspection form shall state that failure to comply with any time limits for corrections may result in an order to cease operations. (History: Sec. 50-50-103 and 50-50-305, MCA; IMP, Sec. 50-50-301, 50-50-302 and 50-50-305, MCA; NEW, 1994 MAR p. 2941, Eff. 11/11/94; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.429 MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES (1) To qualify for reimbursement under 50-50-305, MCA, a local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:

(a) Each licensed commissary or machine located within the jurisdiction of the local board of health is inspected at least twice every 12 months, or on the schedule specified in a signed agreement with the department.

(b) Quarterly inspection reports are submitted to the local board of health and the department within 10 days following the close of each quarter of the fiscal year (1st quarter--September 30; 2nd quarter--December 31; 3rd quarter--March 31; 4th quarter--June 30) on forms approved by the department.

(c) All documentation of enforcement of this subchapter, including but not limited to inspection reports, consumer complaints, illness investigations, plans of correction, and enforcement actions, is retained for 5 years and copies of the documentation are submitted or otherwise made available to the department upon request.

(2) A failure by the local board of health to meet all of its responsibilities under the cooperative agreement or under (1)(a) through (d) above shall result in the withholding of funds from the local board reimbursement fund in an amount to be determined by the department. (History: Sec. 50-50-305, MCA; IMP, Sec. 50-50-305, MCA; NEW, 1994 MAR p. 2941, Eff. 11/11/94; TRANS, from DHES, 2001 MAR p. 2423.)